IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 22ND JUNE 2007 / 1ST ASHADHA 1929

WP(C).No. 18176 of 2007(L)

AGAINST THE ORDER DATED 07/06/2007 IN IA 2714/2007 IN OS.19/1977 of I ADDL.DISTRICT COURT, ERNAKULAM

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PETITIONERS:

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1. T.U.CHACKO,
THAZHATHEDATH HOUSE, KUNNACKAL P.O.,
ERNAKULAM DISTRICT.

2. P.V.GEORGE,
PAPPALIL HOUSE, KUNNACKAL P.O.,
ERNAKULAM DISTRICT.

3. BINU MATHAI,
CHAVANATHUPUTHENPURA HOUSE, KUNNACKAL P.O.,
ERNAKULAM DISTRICT.

4. ABRAHAM T.C.,
THEVARMADATHIL HOUSE, KUNNACKAL P.O.,
ERNAKULAM DISTRICT.

5. K.P.MATHAI,
KAYYANICKAL HOUSE, NELLAD P.O.,
ERNAKULAM DISTRICT.

6. GEORGEKUTTY KURIAKOSE,
MANIRICKAL HOUSE, KUNNACKAL P.O.,
ERNAKULAM DISTRICT.

BY ADV. SRI.SAJAN VARGHEESE K.
SRI.LIJU. M.P

RESPONDENTS:
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1. **VARKEY ITTAN,**
   NEDUMKUZHIYIL HOUSE, KUNNACKAL P.O.,
   ERNAKULAM DISTRICT.

2. **O.P.PAUL,**
   ORAVANMARIYIL HOUSE, KUNNACKAL P.O.,
   ERNAKULAM DISTRICT.

3. **KURUVILA MATHAI KATHANAR,**
   ELANGANAMATTATHIL, NELLAD, ERNAKULAM DISTRICT.

4. **ITTAN PAULOSE KATHANAR,**
   NEDUMKUZHIYIL HOUSE, KUNNACKAL P.O.,
   ERNAKULAM DISTRICT.

5. **M.J.CHERIYAN,**
   MANIYIRICKAL HOUSE, KUNNACKAL P.O.,
   ERNAKULAM DISTRICT.

6. **P.C.VARGHESE,**
   PUTHIYEDATH HOUSE, KUNNACKAL P.O.,
   ERNAKULAM DISTRICT.

BY ADV. SRI.S.SREEKUMAR
BY ADV. SRI. K. SURENDRAMOHAN.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

EXT. P1 **TRUE COPY OF THE LIST OF WITNESSES SUBMITTED BY THE DEFENDANTS NO.8 TO 13 IN OS 19/77 IN THE DISTRICT COURT, ERNAKULAM.**

EXT.P2 **TRUE COPY OF I.A.2714/07 PASSED IN O.S.19/1977 ON THE FILE OF DISTRICT COURT, ERNAKULAM.**

EXT.P3 **TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY THE 5TH RESPONDENT TO EXT.P2.**

EXT.P4 **TRUE COPY OF THE COUNTER AFFIDAVIT BY THE 3RD RESPONDENT TO EXT.P2.**

EXT.P5 **TRUE COPY THE ORDER DTD.7/6/07 PASSED IN I.A.2714/07 IN OS 19/1977 ON THE FILE OF DISTRICT COURT, ERNAKULAM.**

EXT.P6 **TRUE COPY OF THE PROOF AFFIDAVIT OF O.P. PAUL (PW1) IN O.S.19/77 ON THE FILE OF THE DISTRICT COURT, ERNAKULAM.**

[True copy]

P.A. to Judge.

M.N. KRISHNAN, J.

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W.P.C. NO. 18176 OF 2007

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Dated this the 22nd day of June, 2007.

J U D G M E N T

This writ petition is filed challenging the order of the 1st Addl. District Judge, Ernakulam in I.A.2714/07 in O.S.19/1977. This is a fight between two sections of Church and evidence had been let in. After the closure of the evidence the plaintiff moved an application for summoning a document and examine the witness. It was allowed and the document was marked as Ext.X1 and the witness was examined as PW3. Now, the writ petitioners want to recall DW1 and put question to him with respect this document and the evidence tendered by PW3. Admittedly, at that time when DW1 was examined this evidence was not available and therefore question would not have been put to him. Therefore, I find there exists ground for recalling DW1 and cross-examine him to the limited extend of the document X1 and the evidence tendered by PW3.

2. The learned counsel for the respondent had very strongly opposed the writ petition and the prayers therein.

3. It is also submitted that they did not examine the first witness in their witness schedule on account of the earlier decision of the Court and as the Apex Court has changed that position, an opportunity should be given to them to let in evidence. The suit is pending from the year 1975 onwards and at this point of time one need not shut out evidence if it will enable the Court to have proper evidence. Therefore, it is also allowed.

4. I make it clear that by examining this first witness if it becomes necessary for the plaintiff to adduce further evidence, an opportunity to the plaintiff must be given for the same.

5. I make it clear that the parties shall appear before the Court on the next posting of the case before the Additional District Court. The parties shall arrive at a

convenient date for production of the witnesses and as per the direction of the trial judge should proceed with the matter.

The writ petition is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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